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In re Application of
Nick (Nicholas Sheppard) Bromer
Application No. 09/995,097
Filed: November 27, 2001
Attorney Docket No.: None
For: DORSIFLEXION SKATE BRAKE

: DECISION ON PETITION
: ON HOLDING OF NON-COMPLIANCE
: OF APPEAL BRIEF
: 37 CFR 1.181

Applicant's petition under 37 C.F.R. 1.181 filed September 24, 2003 in application Serial No. 09/995,097, requests withdrawal in part of the Notification of Non-Compliance, mailed on February 25, 2003. That is, the petition requests the Table of Authorities, attached with the petition of Sept. 24, 2003, to be an integral attachment to the Supplemental Appeal Brief, also attached with the petition of Sept. 24, 2003.

The petition is **GRANTED** to the extent indicated below.

A petition under 37 CFR 1.181 must include: (1) a statement of facts involved and (2) the point or points to be reviewed and the action requested. There is no fee required for a 1.181 petition.

The petition filed on September 24, 2003, included both elements (1) and (2) above. In addition, in the above noted petition, applicant argues that the previous petition (paper No. 19, July 23, 2003) had not been treated on the merits. However, note petition response of Sept. 22, 2003, paper No. 20, wherein the request to withdraw such finality had been treated and denied. Apparently the instant petition and the petition response had crossed in the mail. As such, the instant request to treat the petition of July 23, 2003 is rendered moot.

In the Notification of Non-Compliance of February 25, 2003, the examiner pointed out a number of formal errors including a holding that Appellant's cited "authorities of a model and declaration" to be inappropriate attachment material for an Appeal Brief and requested their removal therefrom. A review of the Supplemental Appeal Brief, in combination with appellant's remarks, appear to overcome all formal errors previously noted by the examiner. Thus, the only remaining issue is the question regarding entry of the Table of Authorities, including the model (shown at the interview of May 15, 2002) and the Declaration in support thereof. Upon further consideration, the Table of Authorities will be allowed entry for consideration by the Board of Appeals, to the extent presented with the attachment of Sept. 24, 2003.

Applicant should note however, that since the model, demonstrated in the interview of May 15, 2002, and as stated previously, is not commensurate with the original disclosure and elected species to which the claims of the instant application (now under appeal) are directed, is merely supportive of an alternate, non-claimed invention. It's existence as having been demonstrated in the interview of May 15, 2002 is acknowledged and agreed to. The USPTO also acknowledges that the Declaration, filed in support of the model demonstrated, has been entered and considered to the extent that it attests that "the model was built before the filing of the instant application". Applicant is reminded that such model, not having been filed as a substantive part of the Appeal Brief, is not readily available for reference by the USPTO, specifically the Board of Appeals and Interferences. In addition, such Declaration filed in support thereof, has no bearing on the rejections set forth in the examiner's answer, to follow this decision.

Therefore, the request to withdraw in part the Notification of Non-Compliance mailed Feb. 25, 2003, is granted to the extent indicated above. Applicant's request that the appeal fee be reapplied in conjunction with the Supplemental Appeal Brief attached with the petition of Sept. 22, 2003 has been granted. The application is being forwarded to the examiner for completion of the Examiner's Answer, in response to the (now entered) Supplemental Reply Brief and Table of Authorities.

Any questions concerning his decision should be directed to Supervisory Patent Examiner Brian Johnson at (703) 308-0885.

SUMMARY: The petition is **GRANTED** to the extent indicated above.



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